



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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DA 04-2092
July 13, 2004

ENFORCEMENT BUREAU SEEKS COMMENT ON SBC'S REQUEST TO DISCONTINUE AUDIT OF SBC'S COMPLIANCE WITH MERGER CONDITIONS

CC DOCKET NO. 98-141

Comments Due: July 27, 2004

Reply Comments Due: August 10, 2004

On June 9, 2004, SBC Communications Inc. ("SBC") submitted a letter requesting that the Commission no longer require it to engage an independent auditor to examine its compliance with the conditions of the *SBC/Ameritech Merger Order*¹ for all periods beginning on or after January 1, 2004.² Condition XXVII of the Commission's *Merger Order* requires SBC to retain an independent auditor on an annual basis to conduct a compliance audit for all merger conditions in effect during the period, and to publicly file a report with the Commission.³ Because SBC's request effectively asks the Commission to eliminate Condition XXVII for future periods, we seek comment of interested parties prior to making a determination.

EX PARTE STATUS AND PRESENTATIONS

Because of the policy implications and the potential impact of this proceeding on persons not parties to this request, we find it would be in the public interest to treat this case as a permit-but-disclose

¹ *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer of Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999) ("*Merger Order*"). The Enforcement Bureau is also seeking comment on a similar request by Verizon with respect to the Bell Atlantic/GTE Merger audit requirements in CC Docket No. 98-184. See Public Notice, "Enforcement Bureau Seeks Comment on Verizon's Request to Discontinue Audit of Verizon's Compliance with Merger Conditions," DA 04-2093 (rel. July 13, 2004).

² See Letter from Jim Lamoureux, Senior Counsel, SBC Telecommunications, Inc. to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated June 9, 2004 ("*SBC Request*") (attached to this Public Notice). Pursuant to the Bureau's request, SBC supplemented its request with a filing on July 7, 2004, providing additional information regarding the conditions that sunset after May 31, 2004. See Letter from David Cartwright, to Diana Lee, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 7, 2004 (attached to this Public Notice) ("*SBC Supplemental Letter*").

³ See *Merger Order*, 14 FCC Rcd at 14882-84, ¶¶ 410-12 (Appendix D, 14 FCC Rcd at 15034-35, ¶ 66). See also *Delegation of Additional Authority to the Enforcement Bureau*, 17 FCC Rcd 4795 (2002) (delegating authority to the Enforcement Bureau to carry out merger-related audit and compliance tasks).

proceeding under the Commission's *ex parte* rules.⁴ *Ex parte* presentations that are made with respect to the issues involved in this proceeding will be allowed but must be disclosed in accordance with the requirements of section 1.1206(b) of the Commission's rules.⁵

FILING PROCEDURES

Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before July 27, 2004, and reply comments on or before August 10, 2004.⁶ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case, CC Docket No. 98-184. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Ernestine Creech, Room 3-A247, Investigations and Hearings Division, Enforcement Bureau, 445 12th Street, S.W., Washington, D.C. 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or Acrobat Reader. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 98-184), type of pleading (comments and reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send a diskette copy to the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, or via e-mail at joshir@erols.com. A courtesy copy of all comments should be provided in an IBM compatible format using Word or Acrobat Reader via e-mail to diana.lee@fcc.gov.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

⁴ 47 C.F.R. §§ 1.1200(a), 1.1206.

⁵ 47 C.F.R. § 1.1206(b).

⁶ 47 C.F.R. §§ 1.415, 1.419.

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554, (202) 418-0270. They may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone 1(800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at joshir@erols.com.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission's rules.⁷ We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

For further information, contact Trent Harkrader, (202) 418-2955, trent.harkrader@fcc.gov, or Diana Lee, (202) 418-0843, diana.lee@fcc.gov, of the Investigations and Hearings Division, Enforcement Bureau.

Action by the Chief, Investigations and Hearings Division, Enforcement Bureau.

⁷ See 47 C.F.R. § 1.49.



Jim Lamoureux
Senior Counsel

SBC Telecommunications Inc.
1401 I Street NW, Suite 400
Washington, D.C. 20005
Phone 202 326-8895
Fax 202 408-8745

June 9, 2004

VIA ECFS AND U.S. MAIL

Mr. William Davenport
Chief
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington D.C. 20554

Re: *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer of Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules (CC Docket No. 98-141)—Post Merger Audit Requirements*

Dear Mr. Davenport:

SBC respectfully requests that the Commission discontinue requiring SBC to conduct SBC/Ameritech post-merger audits for all periods beginning on or after January 1, 2004.¹ Most of the merger conditions sunset prior to January 1, 2004, and are not subject to audits for periods post-2003. In addition, with the Enforcement Bureau Staff's approval, SBC has elected to include two conditions with a 2004 sunset in the scope of the 2003 compliance audit. Regardless of whether the Commission requires SBC to conduct additional audits, SBC will continue to be subject to certain merger compliance requirements and will report on its compliance on March 15 of each year pursuant to Merger Condition 26.² There is, therefore, no productive reason for the Commission or SBC to devote their resources to further audits.

As of June 1, 2004, seventeen of the 25 SBC/Ameritech operative merger conditions will have sunset. See Table 1. Thus, the amount of information provided to the Commission through the audit report will be substantially less than in prior years. Of the eight merger conditions that have not sunset, two of the conditions require SBC to maintain specific discounts for competitive local exchange carriers for 36 months on previously ordered eligible services and do not require additional action on the Company's part. Further, if SBC were to fall out of compliance with any of these conditions, the harmed party could file a complaint with the FCC. In addition, one of the remaining operative merger conditions is effectively self-policing. For Merger Condition 6, SBC will continue to file quarterly reports on its compliance with the deployment of xDSL in low income urban and rural wire centers.

¹ See SBC/Ameritech Merger Conditions, Appendix C, Merger Condition 27, subparagraph 66 and 67.

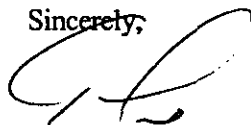
² See SBC/Ameritech Merger Conditions, Appendix C, Merger Condition 26, subparagraph 65.c.

In any event, the merger compliance reporting process, as required by Merger Condition 26, will continue to be in place through the sunset of the last merger condition.³ Under the merger compliance reporting process, SBC will file merger reports on March 15 of each year, describing SBC's compliance with the all open merger conditions. The merger reports are "prepared in a format substantially similar, in relevant respects, to the format of the independent auditor's section of the audit report" described in Merger Condition 27.⁴ This report will allow the Commission and others to confirm SBC's compliance with the merger conditions, without expending costly and time consuming resources necessary for an independent audit. SBC expects the merger condition audits for the years 2004 and beyond would cost at least one million dollars, above and beyond the time and resources that would be expended by SBC and Commission personnel to support and review the audits. The burdens of continued audits clearly outweigh any possible benefits.

For these reasons, SBC requests that the Commission permit SBC to discontinue conducting SBC/Ameritech post-merger audits for all periods beginning on or after January 1, 2004.

If you have any questions, please do not hesitate to contact me at (202) 326-8895.

Sincerely,



Jim Lamoureux
Senior Counsel
SBC Telecommunications, Inc.

cc: Hugh Boyle
Hillary De Nigro
Trent Harkrader
Diana Lee
Pete Young

³ See SBC/Ameritech Merger Conditions, Appendix C, Merger Condition 26, subparagraph 65.c.

⁴ See SBC/Ameritech Merger Conditions, Appendix C, Merger Condition 27, subparagraph 66.f.

Table 1
SBC/Ameritech Merger Conditions
that have Sunset through June 1, 2004

Condition Number	SBC/Ameritech Merger Condition	Sunset Year
1	Separate Affiliate for Advanced Services	2003
2	Discounted Surrogate Line Sharing Charges	2000
4	Access to Loop Information for Advanced Services	2003
5	Loop Conditioning Charges and Cost Studies	2002
7	Carrier-to-Carrier Performance Plan	2004 - Compliance for 2004 included in scope of 2003 compliance audit.
9	Restructuring OSS Charges	2002
10	OSS Assistance to Qualifying CLECs	2002
11	Collocation Compliance	2002
12	Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements	2002
13	Multi-state Interconnection and Resale Agreements	2002
17	Offering of UNEs	2003
18	Alternative Dispute Resolution through Mediation	2002
20	Access to Cabling in Multi-Unit Properties	2002
21	Out-of-Territory Competitive Entry	2002
22	InterLATA Services Pricing	2004 - Compliance for 2004 included in scope of 2003 compliance audit.
24	Additional Service Quality Reporting	2002
25	NRIC Participation	2002

Table 2
SBC/Ameritech Merger Conditions
that Sunset after May 31, 2004

Condition Number	SBC/Ameritech Merger Condition	Sunset Year
3	Advanced Services OSS	2005 - Complete after SBC East sunsets August 2005.
6	Non-discriminatory Rollout of xDSL Services	2005 - Complete after Indiana urban sunsets January 2005.
8	Uniform and Enhanced OSS	2003 - The Company must provide access to the OSS enhancements and additional interfaces for 36 months after they were deployed.
14	Unbundled Loop Discount	2003 - The Company remains obligated to discount loops ordered pursuant to this offering for 36 months for qualifying loops.
15	Resale Discount	2002 - The Company remains obligated to provide the promotional discount ordered prior to the sunset of the offer for 36 months.
16	UNE Platform	2002- The Company remains obligated to provide the promotional UNE platform for 36 months from date of installation.
19	Shared Transferred in Ameritech States	To be determined.
23	Enhanced Lifeline Plans	2004 - Complete after Arkansas sunsets in August 2004.



David G. Cartwright
Director – Federal Regulatory

SBC Telecommunications Inc.
1401 I Street NW, Suite 400
Washington, D.C. 20005
Phone: (202) 326-8894
Fax: (202) 789-5319

July 7, 2004

Ms. Diana Lee
Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
445 Twelfth Street, S.W.; 6C-326
Washington D.C. 20554

Re: *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer of Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules (CC Docket No. 98-141)—Post Merger Audit Requirements*

Dear Ms. Lee:

Per your request, I have provided additional information regarding the conditions that sunset after May 31, 2004. Please see "Additional Notes to Table 2" below.

On June 7, 2004, SBC sent a letter to Mr. William Davenport requesting that the Commission discontinue requiring SBC to obtain SBC/Ameritech post-merger compliance audits for the years beginning on or after January 1, 2004.¹ In the letter, SBC stated there is no productive reason for the Commission or SBC to devote their resources to further audits since most of the merger conditions sunset prior to January 1, 2004. As of May 31, 2004, only eight merger conditions, exclusive of the five administrative conditions, had not sunset. These eight remaining operative conditions primarily require SBC to maintain an existing obligation and do not impose any prospective obligations yet to be achieved and audited. Also, SBC will continue to file annual merger reports on March 15, describing SBC's compliance with the remaining merger conditions. This report will allow the Commission and others to confirm SBC's compliance with the merger conditions, without expending costly and time consuming resources necessary for an independent audit.

SBC estimates the merger condition audits for the years 2004 and beyond would cost at least one million dollars, above and beyond the time and resources that would be expended by SBC and Commission personnel to support and review the audits. Obviously, the financial and operation burdens of additional audits outweigh any possible benefits of continued audits of previously achieved compliance obligations.

¹ See Letter from Jim Lamoureux, Senior Counsel, SBC Telecommunications, Inc., to William Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated June 7, 2004.

If you have any questions, please do not hesitate to contact me at (202) 326-8894.

Sincerely,



cc: William Davenport
Peter Young

SBC/Ameritech Merger Condition		
Condition Number	SBC/Ameritech Merger Condition	Sunset Year
1	Separate Affiliate for Advanced Services	2003
2	Discounted Surrogate Line Sharing Charges	2000
4	Access to Loop Information for Advanced Services	2003
5	Loop Conditioning Charges and Cost Studies	2002
7	Carrier-to-Carrier Performance Plan	2004 - Compliance for 2004 included in scope of 2003 compliance audit.
9	Restructuring OSS Charges	2002
10	OSS Assistance to Qualifying CLECs	2002
11	Collocation Compliance	2002
12	Most-Favored-Nation Provisions for Out-of-Region and In-Region Arrangements	2002
13	Multi-state Interconnection and Resale Agreements	2002
17	Offering of UNEs	2003
18	Alternative Dispute Resolution through Mediation	2002
20	Access to Cabling in Multi-Unit Properties	2002
21	Out-of-Territory Competitive Entry	2002
22	InterLATA Services Pricing	2004 - Compliance for 2004 included in scope of 2003 compliance audit.
24	Additional Service Quality Reporting	2002
25	NRIC Participation	2002

SBC Ameritech Merger Conditions to be Sunset after May 31, 2004		
Condition Number	SBC/Ameritech Merger Condition	Sunset Year
3	Advanced Services OSS	2005 - Complete after SBC East sunsets August 2005.
6	Non-discriminatory Rollout of xDSL Services	2005 - Complete after Indiana Urban sunsets January 2005.
8	Uniform and Enhanced OSS	2003 - The Company must provide access to the OSS enhancements and additional interfaces for 36 months after they were deployed.
14	Unbundled Loop Discount	2003 - The Company remains obligated to discount loops ordered pursuant to this offering for 36 months for qualifying loops.
15	Resale Discount	2002 - The Company remains obligated to provide the promotional discount ordered prior to the sunset of the offer for 36 months.
16	UNE Platform	2002- The Company remains obligated to provide the promotional UNE platform for 36 months from date of installation .
19	Shared Transferred in Ameritech States	To be determined.
23	Enhanced Lifeline Plans	2004 - Complete after Arkansas sunsets in August 2004. All other states sunset before May 2004.

Additional notes to Table 2

Condition 3 - Sunsets in all other states on October 22, 2004.

Condition 6 - Sunsets in all other states on or before the end of May 2004.

Condition 8 - SBC East sunsets August 7, 2005. Sunsets in all other states on April 24, 2005.

Condition 14 - Offer window sunsets in the last states in November 2003, but loops ordered under the condition receive the discount for 36 months. Consequently the number of loops receiving the discount will decline incrementally to zero in November 2006 as loops are disconnected or have received the discount for 36 months.

Condition 15 - Offer window sunset in November 2002 but lines ordered under the condition receive the discount for 36 months. Consequently, the number of lines receiving the discount will decline incrementally to zero in November 2005 as lines are disconnected or have received the discount for 36 months.

Condition 16 - Last lines under this condition sunset November 8, 2005.